

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHN SPOTTISWOOD and NANCY)
MIYASAKI,)
Plaintiffs,) CASE NO.
V.) CV-17-00209-MEJ
UNITED STATES OF AMERICA,)
Defendant.)

CERTIFIED COPY

DEPOSITION OF JOHN SPOTTISWOOD

MONDAY, DECEMBER 11, 2017

BEHMKE REPORTING AND VIDEO SERVICES, INC.
BY: CHRISTINE L. JORDAN, CSR NO. 12262, RPR, CCRR
160 SPEAR STREET, SUITE 300
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Behmke

REPORTING AND
VIDEO SERVICES

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

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6 JOHN SPOTTISWOOD and NANCY)
7 MIYASAKI,)
8 Plaintiffs,) CASE NO.
9 V.) CV-17-00209-MEJ
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8 Deposition of JOHN SPOTTISWOOD, taken on
9 behalf of DEFENDANT, at 450 Golden Gate Avenue,
10 11th Floor, San Francisco, California, commencing
11 at 9:03 A.M., MONDAY, DECEMBER 11, 2017, before
12 Christine L. Jordan, Certified Shorthand Reporter
13 No. 12262, pursuant to Notice.

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1 MONDAY, DECEMBER 11, 2017; 9:03 A.M.
2

3 JOHN SPOTTISWOOD,

4 having been first duly sworn, testified as follows:

5 THE WITNESS: Yes.

6 EXAMINATION

7 BY MS. STIER:

8 Q. I'd first like to -- can you state your name.

9 A. John Spottiswood.

10 Q. Okay. And your address?

11 A. 201 Rockridge Road, San Carlos, nine --

12 Q. And how --

13 A. Sorry.

14 94070.

15 Q. How long have you lived at that address?

16 A. Since 1999, July.

17 Q. Okay. And do you know -- can you tell me all
18 the email addresses you used from January 2013 through
19 the end of 2013?

20 A. Probably. By "used" do you mean had some access
21 to, like my wife's email would be if I ever searched in
22 it or just ones that I personally might have put on a --
23 like --

24 Q. That you may have used.

25 A. -- given to Intuit --

1 Q. That you may have used --

2 A. Yeah.

3 Q. -- to give to Intuit when you were attempting to
4 file that 2012 return.

5 A. Yes, I can.

6 Q. What are those?

7 A. So "jspottiswood@gmail.com."

8 "John@inflection.com."

9 And then there's a forwarding email address that
10 I use that goes to my most current business address
11 called "jspottiswood@mba1994hbs.edu."

12 Q. And in -- during the 2013 calendar year, what
13 were the -- what were your phone numbers?

14 A. (415) 806-8995 and (650) 654-5590.

15 Q. I'd first like to talk about a letter that you
16 submitted to the IRS around April 27, 2015.

17 These are kind of out of order. This is yours.

18 So is this -- can you identify this letter? Is
19 this a letter you sent to the IRS?

20 A. Yes, it looks like a letter I sent, yes.

21 Q. Did you send it on or about -- I guess it was
22 before April 27, 2015?

23 A. Yeah, that sounds about right.

24 Q. Okay. And so in that --

25 (Phone interruption.)

1 BY MS. STIER:

2 Q. -- the second paragraph there --

3 A. Yeah.

4 Q. -- are you talking about the fees that you're
5 appealing?

6 A. Yes.

7 Q. There's the failure to file penalty --

8 A. Yeah.

9 Q. -- failure to pay, and penalty for insufficient
10 funds?

11 A. Right.

12 Q. Okay. Has that third penalty been resolved?

13 A. I think --

14 Q. Or is that an issue in this lawsuit?

15 A. I think it was paid. It wasn't resolved.

16 MR. GREENBERG: Yeah, I'm not aware that it --
17 that it was an issue or -- I'm not -- I'm looking at his
18 transcript now.

19 MS. STIER: I'm just asking if it's, like, at
20 issue in this lawsuit.

21 THE WITNESS: I think it's related to it.

22 Do you know what that . . .

23 I can explain that.

24 MR. GREENBERG: I'm only seeing a -- so --

25 THE WITNESS: So what happened --

1 MR. GREENBERG: -- there's no individual funds
2 penalty. If anything, there would be an estimated tax
3 penalty which, at least based on this transcript, which,
4 you know, is over a year old at this point -- but the
5 amount is only about \$478. So I'm not sure that there
6 is an insufficient funds penalty.

7 So, no, we're not challenging that.

8 MS. STIER: I'm assuming you're not challenging
9 it because it's not in the complaint when I add up --

10 MR. GREENBERG: Yeah, yeah.

11 MS. STIER: -- the amounts.

12 BY MS. STIER:

13 Q. We're only talking about the failure to file and
14 the failure to pay a penalty.

15 A. That's fine.

16 Q. Is that right?

17 MR. GREENBERG: Yeah, yeah.

18 THE WITNESS: Did I get charged it? Because --

19 BY MS. STIER:

20 Q. I understand what happened.

21 A. Okay.

22 Q. I think that you paid twice.

23 A. Right.

24 Q. And there were insufficient funds because you
25 didn't realize you paid the first time. I understand

1 that. I just want to understand if it's in this
2 lawsuit.

3 A. It's not a severe penalty.

4 Q. Yes.

5 MR. GREENBERG: That was on the 2013 year. No,
6 no. That was a different year.

7 MS. STIER: I just wanted to make sure.

8 MR. GREENBERG: Okay. I think it was confused
9 about the different years.

10 MS. STIER: Okay.

11 BY MS. STIER:

12 Q. And so according to this letter -- let's see --
13 is the -- the issue is about the -- the effort to try
14 to -- the attempt to file the 2012 federal income tax
15 return?

16 A. That's right.

17 Q. Okay. And the primary reason that you state in
18 this letter that it was -- that you have this debate
19 about whether it was timely filed was that you had
20 believed that you had filed and paid the taxes?

21 A. Right.

22 Q. Okay. And the reason that you believe that you
23 had filed the taxes -- can you tell me why that is?

24 A. Yeah. Because I -- so for the first year I
25 used -- well, the first year at least in a long time I

1 used TurboTax to file my taxes. And when I went through
2 the process, I got to the end and it -- it, you know,
3 asked me to provide my payment information and then hit
4 "submit."

5 And it gave me the choice after that of whether
6 I wanted to also e-file my state taxes, which I chose
7 not to. But when I hit "submit," it said "Your return
8 is being processed" or -- I don't remember exactly what
9 the screen said. But the way I interpreted it was just
10 the same way when I take it to the post office and put
11 it in certified and send it, that it's taken care of.
12 So I thought it was paid.

13 Then I took my state tax; I printed that out. I
14 took that to the post office and mailed it like normal.
15 And I thought I was done. And then, you know, a year
16 later I went back in and paid taxes on the new version
17 of TurboTax and never in -- to my recollection got any
18 sort of notification either from the IRS or from Intuit
19 that my taxes hadn't been properly paid until I
20 ultimately resolved the issue over a year later.

21 MR. GREENBERG: Just to clarify: This was
22 the -- this was the -- my understanding is this was the
23 at-home version of TurboTax.

24 THE WITNESS: Yeah.

25 MR. GREENBERG: So it's two different versions.

1 There's the website version and then the home version
2 which you install on your home computer, laptop,
3 whatever. This is the latter, the home, you know,
4 installed version.

5 MS. STIER: Okay.

6 BY MS. STIER:

7 Q. And so from what you just said, you did not file
8 your state taxes through TurboTax?

9 A. No.

10 Q. Why didn't you file through TurboTax?

11 A. Honestly, it seems cheap, given the total amount
12 of taxes involved, but it was like a \$50 add-on to file
13 my state taxes. And I thought, "I'll print them and
14 take" -- it felt annoying to me it would cost me a
15 dollar to mail it and 50 bucks to file electronically;
16 whereas, the federal return is included in the cost of
17 buying the TurboTax. So there's no reason not to file
18 the federal return electronically.

19 MR. GREENBERG: And I'll have to review my file.
20 I'm learning about this now. I assumed it was being --

21 MS. STIER: Right. My understanding was that he
22 used TurboTax to file the state ones too and there was
23 no problem. I thought that's what you alleged.

24 MR. GREENBERG: Right. That was my assumption.

25 THE WITNESS: I mean, I didn't file it through

1 them. I completed it through them, and then you have a
2 choice of whether you want to e-file it or whether you
3 want to send it in. And I sent it in.

4 But I believe that I -- I'm virtually certain
5 that I paid for it -- paid for it electronically. But
6 that's something -- once you're above a certain amount
7 of dollars for state tax, you have to pay for it
8 electronically. But then I filed it --

9 BY MS. STIER:

10 Q. So I want to make sure that you understand that
11 you are under oath.

12 A. Yeah.

13 Q. So if I ask you a question and you're not sure,
14 I don't want you to guess at all.

15 A. Okay.

16 Q. Right? So what you need to -- what you need to
17 do is if you don't know --

18 A. Yeah.

19 Q. -- then you have to go and -- and refer to
20 something else in order to give an honest answer, that's
21 fine. Because I'm going to --

22 A. I get it. I get it.

23 Q. -- listen to what you say. And I'm not saying I
24 don't think you're telling the truth --

25 A. Yeah.

1 Q. -- but I don't want to go off on a tangent.

2 A. I'm virtually certain that I filed my --

3 Q. Okay.

4 A. -- I sent my tax return to the state with paper.

5 I'm not 100 percent sure of that, but I'm highly
6 confident of that.

7 But then I paid for it -- I think the State of
8 California requires you to pay electronically if the
9 amount you owe is over a certain amount. So I paid for
10 it through the FTB website. So I paid electronically,
11 but I filed it via the mail; whereas, the federal return
12 I filed the -- attempted to file the TurboTax --

13 Q. And so when you --

14 A. -- through e-file.

15 Q. When you file the state return, did you -- how
16 do you know that the payment was made? Did you check?

17 A. Not until this whole -- not until probably
18 January-ish of 2015 when this issue came up.

19 Q. Okay.

20 A. I went back and looked and said my state return
21 payment went out, but my federal return didn't -- my
22 federal payment didn't.

23 Q. So is it your testimony --

24 A. Yeah.

25 Q. -- then, that between April 2013 and

1 January 2015, you never looked at your bank account to
2 determine whether or not that state tax payment had been
3 made?

4 A. So I don't want to say for sure January two
5 thousand --

6 MR. GREENBERG: Wait a minute.

7 THE WITNESS: Okay.

8 MR. GREENBERG: Let's clarify.

9 Are you saying did he ever look at his bank
10 account or look at his bank account with specific
11 intention of --

12 MS. STIER: My question was if he looked at his
13 bank account to determine whether or not that state tax
14 return had been made. Until I --

15 MR. GREENBERG: Did you look at the bank account
16 with specific intention of seeing, okay, was that debit
17 taken out of there?

18 THE WITNESS: Until I -- until I realized that
19 my federal return for 2012 had not been filed or paid, I
20 never looked at our savings account, which is what we
21 had attempted to have the money pulled from, to see
22 whether or not either the state or the federal funds had
23 been withdrawn. But then subsequently I went back and
24 looked at April of 2013 to see that, and I noticed that
25 the state funds had been pulled out but the federal

1 funds had not.

2 BY MS. STIER:

3 Q. And to the best of your recollection, you first
4 made that inquiry or first looked at those -- that bank
5 account --

6 A. Either December of 2014 or January of 2015.
7 Sometime in, like, a 60-day window there. I can't
8 remember exactly when.

9 Q. Okay. And did you -- in your family, who is
10 it -- is it you or your wife or someone else that
11 maintains the finances, including looking at the bank
12 account, paying bills?

13 A. So it's a bit of a challenge. I pretty much
14 handle our investments, and my wife pretty much handles
15 our bills. So when it comes to the bank account, it's
16 mostly my wife. Now, I will periodically go in and look
17 at the bank account for certain things; certainly taxes
18 if it comes up like this because I manage the taxes.

19 But in this particular account, which I stated
20 in a couple of these letters, because we had made this
21 money in this particular year, we made a decision to
22 remodel our home. And so we left a chunk of money in
23 the savings account from which to make payments over the
24 course of 18 months or whatever to do the remodel.

25 And so there was a big chunk of money in there.

1 Normally we don't keep more than, you know, 10- or
2 \$20,000 in our bank account. But because we knew we had
3 a bunch of -- of larger upcoming expenses related to the
4 house, we had a big chunk in there. So if it had gotten
5 low, I think my wife would have been nervous about it.
6 But the fact that it was high, she didn't pay any
7 attention to it.

8 Q. Okay. And so did you -- was your wife aware of
9 the filing of your state tax return and the amount of
10 taxes that were owed?

11 A. I doubt it. I knew she knew that we owed a lot
12 of taxes, but I don't think she knew -- I don't sit down
13 with her and say, "Here's exactly what we're paying for
14 state and federal taxes."

15 Q. Was your wife -- do you know if your wife was
16 aware that the -- the state taxes were to be taken out
17 of your savings account at Bank of America?

18 A. I'm pretty sure she would have thought that
19 because we didn't have enough money in our saving -- in
20 our checking account to cover it that said --

21 MR. GREENBERG: Well --

22 MS. STIER: Don't speculate.

23 THE WITNESS: I'm speculating. I don't know if
24 she was aware or not.

25 MR. GREENBERG: Yeah, you don't know.

1 BY MS. STIER:

2 Q. Do you know whether you had any conversation
3 with your wife to explain to her that the taxes were
4 going to be paid out of the savings account at Bank of
5 America?

6 A. I do not recall. I believe I would have asked
7 her --

8 MR. GREENBERG: That's fine.

9 THE WITNESS: Yeah. Okay.

10 BY MS. STIER:

11 Q. You do not recall?

12 A. I do not recall.

13 MS. STIER: Okay. And so I'm going to have to
14 depose her.

15 BY MS. STIER:

16 Q. So the -- who between you and your wife would
17 have had the responsibility to look back at the -- to
18 look at the Bank of America savings account to determine
19 whether the taxes had been paid?

20 A. I'll be honest with you. We've never in the
21 history of paying taxes ever looked to see whether a
22 check has cleared. We've just paid, and it's always
23 cleared and I never thought of it. I don't know if you
24 guys think of it, but it never occurred to me. So I
25 don't think she would think of it as her responsibility,

1 but I've never looked at it either.

2 Q. Okay. And have you ever used TurboTax before?

3 A. I don't recall. I have not used it for many
4 years since our taxes became complicated. I have used a
5 tax accountant. At least -- I don't recall how many
6 years, but multiple years prior to 2012. The only
7 reason that I used TurboTax in 2012 was because we had a
8 very complex transaction at our work. I was talking to
9 our CFO, and I said, "Who do you use for your taxes?"
10 Because I wasn't particularly happy with my tax
11 accountant.

12 And he said, "I do my own through TurboTax."

13 And I said, "Really? Would you kind of guide me
14 through the process?"

15 And he said, "Sure."

16 So I worked with Jeremy Wood, who was CFO, to do
17 my taxes on my own. It was the first time in years I
18 had done it. I don't know whether I had used TurboTax
19 prior to that.

20 Q. Is it fair to say prior to April 2013 for the
21 ten years prior you didn't use TurboTax to file your
22 returns?

23 A. I do not know. I would say that, to the best of
24 my knowledge, I've never -- I've never used TurboTax in
25 a way that I would electronically file my federal tax

1 returns before this year.

2 Q. Okay. Have you ever used TurboTax since then?

3 A. Yes.

4 Q. Okay.

5 A. I used it in two thousand -- I think I used it
6 every year since then for my personal taxes.

7 Q. Is that for your federal return?

8 A. Uh-huh. And I've also used it for my state
9 return, but not -- I don't think I did for the first few
10 years.

11 Q. Okay. And when you used it --

12 TurboTax?

13 A. Yeah.

14 Q. -- subsequently, do you recall getting a message
15 from TurboTax --

16 MR. GREENBERG: Wait a minute. That's not
17 relevant to this issue.

18 BY MS. STIER:

19 Q. -- after --

20 MR. GREENBERG: This isn't relevant to 2012.

21 MS. STIER: I understand. You could say that.
22 What I really want to ask him is if you -- can I just
23 ask him the question?

24 MR. GREENBERG: Well, what is the question?

25 MS. STIER: Okay.

1 BY MS. STIER:

2 Q. So the question is: Subsequent to this -- this
3 presumably --

4 A. Yeah.

5 Q. -- first time that you used TurboTax in April of
6 2013, you've used it subsequently?

7 A. Yes.

8 Q. When you used it subsequently, have you received
9 notification from TurboTax that the return has been
10 successfully filed?

11 MR. GREENBERG: Wait a minute. I don't know the
12 answer to this question, and I don't want to know the
13 answer to this question because the only real issue
14 would be did he receive -- the only relevant period
15 would be whether he received any kind of notification
16 from TurboTax for any tax year up until the time that he
17 filed his 2012 tax return. So --

18 MS. STIER: I'm going to ask that -- we can go
19 off the record for a minute.

20 MR. GREENBERG: Sure. That's fine.

21 (Off the record from 9:21 a.m. to 9:22 a.m.)

22 MS. STIER: Back on the record.

23 THE WITNESS: There's kind of two pieces there.
24 Definitely prior to 2012 and including 2012 I do not
25 recall ever receiving any kind of email from TurboTax.

1 Although, again, I didn't use it for a number of years
2 prior. But in -- at least in 2016, I did receive email
3 confirmation that my TurboTax return had been
4 successfully filed.

5 MS. STIER: Okay.

6 THE WITNESS: And every year since then, by the
7 way, I've gone back and monitored --

8 MR. GREENBERG: Wait. Just to be clear --

9 THE WITNESS: Yeah.

10 MR. GREENBERG: -- you mean for the 2016 return,
11 which you received in 2017, or you mean in 2016, the
12 year you received that for -- do you have any --

13 THE WITNESS: When I filed --

14 MR. GREENBERG: If you don't --

15 THE WITNESS: When I filed -- after filing my
16 2016 return, via TurboTax --

17 MR. GREENBERG: Right.

18 THE WITNESS: -- at some point I got an email
19 saying "Your return has been successfully filed."

20 MS. STIER: Okay.

21 MR. GREENBERG: That would have been in 2017?

22 THE WITNESS: Yeah.

23 MR. GREENBERG: Yeah.

24 THE WITNESS: Yeah, that's right.

25 MR. GREENBERG: Okay.

1 BY MS. STIER:

2 Q. And so then -- and going back, did you file your
3 federal and state 2013 taxes using TurboTax?

4 A. To the best of my knowledge, I did.

5 Q. Okay.

6 A. I'm 99 percent certain of that. But I can't --
7 I -- yeah.

8 Q. Okay. Because I thought that you had said that
9 you, to the best of your recollection --

10 A. Yeah.

11 Q. -- that you filed and --

12 A. Oh, you said state and -- so I'm -- yes. I'm
13 virtually -- to the best of my recollection, I filed my
14 federal return in 2013 with TurboTax. And I'm not sure
15 what I -- I certainly processed my state return with
16 TurboTax. I'm virtually -- again, I'm -- to the best of
17 my recommendation, I processed my state return with
18 TurboTax. But I think it's quite likely I sent it in
19 between -- again, because I didn't want to pay the 40
20 bucks or whatever the state fee was to e-file it.

21 Q. So you're talking about your 2013 tax returns?

22 A. That would have been in 2014. Right.

23 Q. '14?

24 MR. GREENBERG: Those weren't filed until later.

25 THE WITNESS: Was it October? Did I do a

1 deferred . . .

2 MR. GREENBERG: Hold on a second. Let me just
3 double-check.

4 THE WITNESS: Sometimes I ask for an extension.

5 MS. STIER: This is what I want to ask him.

6 THE WITNESS: Okay.

7 BY MS. STIER:

8 Q. So for the two thousand -- when you attempted to
9 file your 2013 federal income tax return --

10 A. Yeah.

11 Q. -- you were using TurboTax?

12 A. To the best of my recollection.

13 Q. Okay. At that time, how did -- did the 2013
14 federal income tax return -- was it accepted for filing
15 through TurboTax?

16 A. I don't know. I don't recall.

17 Q. Okay.

18 A. I mean, I -- I didn't --

19 MR. GREENBERG: That's --

20 THE WITNESS: I didn't experience any reason to
21 believe that it hadn't. But at that point I also
22 thought my 2012 return had been properly filed and
23 received.

24 BY MS. STIER:

25 Q. At some point do you recall that the IRS

1 contacted you about filing your 2013 federal tax
2 return --

3 A. Yes.

4 Q. -- and to notify you that the 2012 --

5 A. Yes.

6 Q. -- had not been filed?

7 A. Yes.

8 Q. Okay.

9 MR. GREENBERG: Wait. Wait. That's confusing.

10 Sorry. One more time.

11 THE WITNESS: Well, I got a notification --

12 MR. GREENBERG: Wait. Stop.

13 THE WITNESS: Okay.

14 MR. GREENBERG: Sorry. One more time.

15 BY MS. STIER:

16 Q. Did the IRS -- let's start from the beginning.

17 MR. GREENBERG: Yeah.

18 BY MS. STIER:

19 Q. You attempted to file your 2013 federal income
20 tax return using TurboTax, right?

21 A. Yes.

22 Q. And you --

23 A. To the best of my recollection.

24 Q. And you attempted to file that using TurboTax
25 timely before April 15, 2014, correct?

1 A. Unless I -- unless I sent in payment and
2 deferred. I have deferred my taxes in some years
3 because of LLC, K-1s --

4 MR. GREENBERG: If you're not sure --

5 BY MS. STIER:

6 Q. I'm talking about the filing, not the payment.

7 A. The filing would have been -- well, so you file,
8 then you defer. Is that how it works? I'm not sure. I
9 either -- on April 15th of 2014, I would have either --

10 MR. GREENBERG: Wait. Wait. You're speculating
11 again. If you're not totally sure, just say, "I'm not
12 really sure," which is . . .

13 THE WITNESS: I'm not really sure.

14 But I believe that I used TurboTax at some point
15 in 2015 -- or 2014 for my 2013 taxes in a manner that
16 would have complied with the IRS, whether that was
17 through a deferral in October 15th or prior to
18 April 15th.

19 BY MS. STIER:

20 Q. But to the best of your recollection, did you
21 receive any notification from TurboTax concerning the
22 filing of that 2013 tax return as to whether or not it
23 had been filed?

24 A. I do not.

25 Q. You don't recall?

1 A. I don't recall, yeah.

2 Q. Okay. All right.

3 And the first notice that you recall that the --
4 your 2012 federal tax return had not been filed with the
5 IRS was either in late December -- December of 2014 or
6 January 2015?

7 A. I believe -- and we don't have a photocopy of
8 this. I was -- I believe that I was notified sometime
9 in November of 2014 because I subsequently recall the
10 first thing I did was to call the IRS. I believe that
11 that was in December, because I believe I was on break
12 with my kids. So it would have been sometime in late
13 December that I had an initial call with the IRS to try
14 to understand what had happened.

15 Q. And so I just want to make sure --

16 A. Yeah.

17 Q. -- that you're being accurate, because did you
18 just say that your first notice was November 2014 or
19 December 2014?

20 A. To the best of my recollection, it would have
21 probably been sometime in November. I think late-ish
22 November. But I'm not a hundred percent sure.

23 MR. GREENBERG: I was looking at the -- we were
24 discussing this. I was looking at his transcript. The
25 first -- typically on -- if a notice goes out, it should

1 appear on that transcript. And they always do a great
2 job with those transcripts in adding everything. But
3 the first notice that shows up is February of 2015 which
4 is a balance due notice.

5 John was saying that he received possibly some
6 other notice a couple months prior to that which
7 triggered his filing. I don't have a copy of that. It
8 doesn't appear on the transcripts.

9 BY MS. STIER:

10 Q. And I'm just asking you what you recollect.

11 A. My recollection is I received something in
12 November, and then I had a phone call with the IRS in
13 December. Then subsequently I paid on the 7th of
14 January.

15 Q. Okay. And then going back to Exhibit 1, that
16 letter that you sent to the IRS on April 27, 2015.

17 A. Yep.

18 Q. You also state that the secondary reason for the
19 late filing and payment had to do with your
20 father-in-law's illness.

21 A. That's correct.

22 Q. Okay. And so can you tell me how that relates
23 to the filing of the return.

24 Then I'm going to ask you afterwards --

25 A. Yeah.

1 Q. -- if that relates to the payment or filing or
2 both.

3 A. So the -- "relates" is probably the right word
4 for it.

5 So my father-in-law's illness -- I don't know --
6 I can't say with certainty that my wife would have
7 noticed anything about our savings account had my
8 father-in-law not been ill. But due to that illness and
9 resulting retirement and then this process of -- led to
10 this process of selling his -- his dental practice to
11 his son, which was kind of a big family affair, my wife
12 was pretty distracted.

13 And so I don't know. That's the reason I
14 brought it up, was just another factor in the -- in the
15 relationship. It would have -- that's it.

16 Q. And so -- and I mean no disrespect.

17 A. Yeah, I totally get it.

18 Q. I don't mean any disrespect.

19 A. Yeah.

20 Q. But during this period of time, you were also
21 doing a remodel, correct?

22 A. Yes.

23 Q. And was your wife taking care of the payments
24 for that remodeling?

25 A. Yes. She writes all the checks.

1 Q. Okay. And so during this period of time, the
2 remodeling went on?

3 A. Yes.

4 Q. Okay. And you state in that letter that, while
5 your father-in-law's illness did not directly impact the
6 rejection of the return, you believe it contributed to
7 your wife's not noticing that the funds were not
8 withdrawn. Is that accurate?

9 A. Again, I don't know if she would have noticed
10 anyway. I think the odds are honestly kind of low. But
11 they're even lower given that distraction. But --

12 Q. And --

13 A. Yeah, that's it.

14 Q. And once again, with no disrespect.

15 A. Yeah.

16 Q. But your wife was making the payments for the
17 remodeling out of that savings account?

18 A. She was transferring money out of the savings
19 account into the checking account on a periodic basis so
20 that she could write checks for the remodeling, yeah. I
21 think, had the funds got low again, she would have been
22 likely to notice. But the funds being high, I just
23 don't think it ever occurred to her.

24 Q. And in the complaint, paragraph 15 of this
25 complaint --

1 A. Yeah.

2 Q. -- it states [as read]:

3 "Because of abnormally high bank
4 account balances and abnormally high
5 taxes, they" --

6 A. Yeah.

7 Q. -- "they did not notice" --

8 A. Yep.

9 Q. -- "the IRS automatic debit had not occurred."

10 Can you explain to me what that means?

11 A. So because we had, like -- I mean, in the
12 history of our lives, we never had a million dollars in
13 our bank account, or whatever amount. I think we had a
14 little over that because we were doing a remodel that
15 was going to cost, like, 5-, \$600,000. Plus we had some
16 big tax payments that I knew we had.

17 So when the money came in, instead of, like,
18 putting it all into, you know, some other account --
19 investment account, we put a lot of it into our bank
20 account. Historically, you know, we would have had,
21 like -- we keep, like, 20,000 in our bank account. So
22 if I had \$500,000 in there in order to pay taxes and all
23 of a sudden, you know, three months later there's still
24 \$500,000 in there, my wife probably would have said,
25 "Why do we have \$500,000 in our bank account?"

1 Because we had over a million dollars in our
2 account to pay for these upcoming remodel expenses. I
3 think she just didn't notice that these taxes -- she
4 didn't -- I don't think she -- necessarily she knew
5 whether I was keeping extra money in there because maybe
6 the remodel might go over, and we wanted to be safe and,
7 you know.

8 Q. I asked you not to speculate.

9 A. Yeah. So I don't want to speculate.

10 MR. GREENBERG: Just to add context too, your
11 paragraph talks about the business that was sold in
12 2012, which I believe was, like, bought by ancestry.com.

13 THE WITNESS: Yes.

14 MR. GREENBERG: Yeah.

15 BY MS. STIER:

16 Q. That was my next question. The abnormally high
17 balance in your bank account --

18 A. Yeah.

19 Q. -- that was in your savings account, correct?

20 A. Yes.

21 Q. Okay. So it was -- how much over a million was
22 it?

23 A. I'd be speculating. 1.3.

24 Q. Just a little over a million?

25 A. Yeah. Yeah.

1 Q. And that money was from the sale of your
2 business?

3 A. Yes.

4 Q. Okay. There were -- were there any loans for
5 the remodel?

6 A. No.

7 Q. Okay. In this letter, Exhibit 1, over here you
8 state -- right here. And we just talked about this a
9 little while ago.

10 You found out in November 2014 when the IRS
11 notified you that they couldn't process the 2013 return
12 because 2012 had not been completed?

13 A. That was my understanding at the time.

14 Q. Okay. Did you draft this letter?

15 A. Yes.

16 Q. Did you do it by yourself?

17 A. I did.

18 Q. Did you rely upon any documents or anything to
19 write that?

20 How did you come up with that in November?

21 A. Yeah, I -- I had letters from the IRS -- not
22 letters per se but, like, notifications. I can't
23 remember what it was. But they indicated that my 2012
24 return had not been completed and that they were --
25 therefore could not process my 2013 return.

1 But I don't remember whether -- like, it's
2 possible -- I wouldn't bet my life that that was exactly
3 right, that phrasing. But fundamentally I realized that
4 my 2012 taxes had not been processed due -- because of a
5 letter I -- or a notification that I received from the
6 IRS.

7 Q. Okay. And so can you testify today whether that
8 was just based on memory or you were looking at
9 something to come up with November 2014?

10 MR. GREENBERG: It's not --

11 THE WITNESS: Probably --

12 MR. GREENBERG: If you can't totally remember,
13 that's fine.

14 THE WITNESS: I was --

15 MS. STIER: That's what I asked.

16 MR. GREENBERG: Yeah.

17 THE WITNESS: I would say it's based on -- it
18 could have been based on memory or I could have had the
19 actual piece of paper in front of me. I don't recall.

20 BY MS. STIER:

21 Q. Okay. But I guess to say it would have been
22 your notification even if it was based on memory and you
23 weren't looking at it --

24 A. Yes.

25 Q. -- when you were drafting that letter --

1 A. Yes.

2 Q. -- that was based on something that you actually
3 received in writing from the IRS, correct?

4 Would that be accurate?

5 A. I don't recall. I believe that -- I can't
6 imagine how else I would have learned about it.

7 Q. Okay.

8 A. So I believe that's the case. I believe I got a
9 notification.

10 Q. And so in the complaint it says that you found
11 out on January 7, 2015. Do you know what you looked at
12 or what you relied upon?

13 MR. GREENBERG: Right. Well, I -- I drafted the
14 complaint.

15 MS. STIER: I want to ask him the question.

16 THE WITNESS: Okay.

17 MS. STIER: And then I'll -- you can.

18 MR. GREENBERG: All right.

19 THE WITNESS: Sorry, you were saying?

20 BY MS. STIER:

21 Q. I'm just asking why the discrepancy in
22 paragraph 16. It says that you found out on
23 January 7th. Do you know what happened on that date and
24 why the discrepancy between these two?

25 A. Yeah, no, so -- yeah. So what happened was, as

1 I described before, to the best of my recollection, I
2 got notification in November in some way, shape, or form
3 that my 2012 return had not been processed.

4 I called the IRS at least maybe twice during the
5 Christmas break which -- taking a long time, but I
6 ultimately talked to somebody. I think even at that
7 time, maybe later, because I had to call back multiple
8 times, I might have gone through, like, a phone-based
9 discovery process to see whether they could just abate
10 the penalties.

11 And -- and ultimately when that didn't happen I
12 realized, okay, I don't want to pay the penalties
13 because I don't feel like I should based on my discovery
14 of my own discovery of what happened. So I made the
15 decision to pay the taxes and pay the interest because I
16 felt like, hey, if I didn't pay, then I at least should
17 pay for the interest because whatever.

18 So I paid for the taxes and I paid for the
19 interest. And I wrote that check in January and sent it
20 along with my -- a paper copy of my return.

21 Q. Okay.

22 A. By that point I had seen -- gone back into
23 TurboTax because I had to do that in order to print the
24 return and saw that it said "not accepted" and realized
25 that it was my -- a mis- -- it wasn't a mistyping. It

1 was the wrong -- entering the wrong, by one digit,
2 social security number for my youngest son, yeah.

3 Q. Dependent.

4 In this letter on Exhibit 1, you state here
5 [as read]:

6 "Intuit may have informed me in
7 fine print that I needed to log back
8 in to make sure that my return had
9 not -- had not been rejected."

10 A. "My return had not been rejected."

11 Oh, yeah, to make sure that it had not been
12 rejected. That's speculation. I'm not a lawyer. But
13 that -- I'm just -- all I'm saying is that --

14 Q. Hold on one second.

15 A. Okay. Yeah.

16 Q. [As read]:

17 "But, if so, I did not read this
18 fine print."

19 Okay. What do you mean by that? Was -- did you
20 go back and look at something from Intuit, or is this --
21 or is this --

22 A. Yeah. So when I ultimately went back in January
23 and tried to -- logged in to my return and then went to,
24 like, the final screen -- I don't know how it works
exactly -- something came up that said that it had been

1 rejected due to this particular error and that -- I
2 searched on Google for that. And then it said it was
3 related to a misentered social security number or
4 whatever that's . . .

5 So there was no -- I never saw -- and on that
6 screen there was nothing. But what I don't have -- I
7 never took, like, a screenshot of the screen that said,
8 prior to that, that your tax return -- like, I put in
9 all my information; I hit go; it says we're processing
10 your return. I didn't, like, study that screen.

11 I just -- it's a little bit like when I mail my
12 return off, I just assumed it was good. So all I was
13 trying to say at the end of that letter was I don't
14 exactly know in detail what was on that screen.

15 Q. Okay. When did you first log back in to your
16 TurboTax account to find out that the return had not
17 been accepted for filing?

18 A. To the best of my knowledge, that was in
19 December of 2014 --

20 Q. Okay.

21 A. -- after I had received notification. Could
22 have been November.

23 Q. Okay.

24 MR. GREENBERG: To be clear: Obviously, when
25 you say "log back in to" his account, you mean, like,

1 log back in to the TurboTax program, right?

2 THE WITNESS: Yes. It's not an account.

3 MR. GREENBERG: That's a question for her.

4 THE WITNESS: Yeah. I went -- the first time
5 that I went back into the 2012 TurboTax program to the
6 best of my knowledge.

7 BY MS. STIER:

8 Q. Okay. And to the best of your recollection
9 today, did you go back into the TurboTax program to find
10 out this information shortly after you were notified
11 that the return had not been accepted for filing?

12 A. Yes.

13 Q. Like, do you know how long it was afterwards?
14 Same day?

15 A. No, it probably wasn't the same day. But it was
16 definitely within a week or two. I shouldn't say
17 definitely. To the best of my recollection, it would
18 have been within a week or two.

19 Q. Okay.

20 A. Like, I was pretty shocked to get the
21 notification that my tax return -- taxes had not been
22 paid.

23 Q. Okay.

24 A. First time I went into the bank account to make
25 sure that the money had not been withdrawn, so there was

1 some other due diligence that I did before I actually
2 logged back in to Turbo -- I don't know if it's called
3 "logged back in," but went back in to the tax program
4 for 2012.

5 Q. Were you the one who looked back into the bank
6 account to determine whether the 2012 taxes had been
7 paid?

8 A. Yes.

9 Q. Okay. And do you remember, was that a
10 complicated process?

11 A. I mean, it's -- sometimes I forget what our
12 passwords are because I don't go into our bank account
13 that often. But it's not super complicated. I know how
14 to print PDFs of the account summaries and so forth.

15 Q. Right. So you would just look at the April 2013
16 and May 2013 bank statements to see if the money --

17 A. Yeah. I think I looked at March too. I didn't
18 know exactly when I filed my return, but exactly.

19 Q. Okay.

20 A. I just went back and looked at, like, three
21 months worth of statements to see whether there was a
22 \$395,000 withdrawal. And there had not been.

23 Q. Okay. So in this letter, Exhibit 1, you state
24 that you -- in this first paragraph it says that, you
25 know [as read]:

1 "I certainly wish I had checked
2 back on Intuit's site 48 hours later
3 to make sure that my return had
4 successfully filed, but it never
5 occurred to me to do so."

6 A. Right.

7 Q. Okay. Where did you come up with that
8 48-hour --

9 A. I don't know. I think I just assumed that it
10 probably would have been rejected within 48 hours. And
11 I would have -- if I'd logged in 48 hours later, I would
12 have known that it was rejected. But I don't know that.

13 Q. Do you know today why you said two days later?

14 A. No.

15 Q. Okay.

16 A. It's just an estimate. I could have said 72
17 hours.

18 Q. You just don't recall why you said that?

19 A. I don't recall.

20 Q. Okay.

21 (Reporter interrupts.)

22 MS. STIER: At the end of this we'll mark them.

23 (Discussion held off the record.)

24 MS. STIER: This is Number 1.

25 (Exhibit 1 was marked for identification.)

1 MS. STIER: And this is Number 2.

2 (Exhibit 2 was marked for identification.)

3 BY MS. STIER:

4 Q. This is Number 2, the request.

5 A. Okay.

6 Q. So I'm now -- now I'm going to ask you questions
7 about this.

8 A. Yeah.

9 Q. And I'm going to go into possible questions
10 concerning that "48 hour" statement --

11 A. Okay.

12 Q. -- statement that you made --

13 A. Okay.

14 Q. -- so you know where we're headed.

15 A. Okay.

16 MR. GREENBERG: Again, if it's speculation, just
17 say, "I'd have to speculate."

18 MS. STIER: No, I'm not asking him to speculate.

19 THE WITNESS: Okay.

20 MS. STIER: It doesn't help anybody.

21 BY MS. STIER:

22 Q. So if you can turn -- is this a letter that you
23 wrote to the Internal Revenue Service?

24 A. I'm pretty sure it is.

25 Q. Okay. So look and see if your signature is on

1 it.

2 A. Sure.

3 Q. I don't know why it's like that.

4 A. Yeah. Yep.

5 Q. That's your signature?

6 A. Yeah, that's my signature.

7 Q. Okay. And so it has some attachments to it.

8 A. Okay.

9 Q. And the first attachment on -- I want to point
10 out to you is marked on the top as page 11 of 16.

11 A. Okay.

12 Q. And is that the screenshot from the TurboTax
13 software that you looked at in either November or
14 December of 2014?

15 A. So I didn't take this screenshot, to the best of
16 my recollection, when I went in in December or November
17 of 2014. But I believe that I was able to still-print
18 this out at a later date when I wanted to create this
19 letter. So somehow it was still available.

20 Q. But I'm saying -- I guess my question is this:
21 When you first investigated this --

22 A. Yeah.

23 Q. -- and went back into the software, is this what
24 you saw, this page 11 of 16?

25 A. To the best of my recollection, it is, yeah.

1 Q. Is this your handwriting?

2 A. Yes. For sure.

3 Q. "I found the computer that my 2012 TurboTax
4 software and" --

5 A. -- "investigated the issue."

6 So I was wondering about that. When you asked
7 had I looked into this like a day later or two days
8 later, I was trying to remember whether -- because I
9 change computers at work periodically. But I definitely
10 kept the computer that my TurboTax software was on, but
11 I think I might have had to go find it and remember the
12 password and stuff. So it could have taken a few days.

13 Q. So if you look at that --

14 A. Yeah.

15 Q. -- on the top, it says "Sunday, 9:51 p.m."

16 A. Yeah.

17 Q. Okay.

18 A. I believe -- as I said, I believe that I printed
19 this kind of when --

20 Q. Forget the printing.

21 A. Speculation.

22 Q. Forget the printing.

23 A. Okay.

24 Q. I want to ask you about this 48-hour period.

25 A. Okay. Okay.

1 MR. GREENBERG: Wait.

2 THE WITNESS: But to be clear --

3 BY MS. STIER:

4 Q. It says "Send" --

5 A. And, again, this may not be helpful, but this is
6 from my computer.

7 Q. I understand.

8 A. It's not anything related to this screen or when
9 this screen was -- yeah. Anyway. You understand.

10 Okay.

11 Q. And so -- well, I'm not sure I do understand.

12 A. Okay.

13 Q. So Sunday, 9:51. Do you know whether that was
14 when the return was --

15 A. It's not. So Sunday, 9:51 -- what this is is --
16 this stuff up here is the Mac operating system. This is
17 my TurboTax software brought up within it. So the time
18 that I took this screenshot was on a Sunday at 9:51 p.m.
19 But that's not when this message was -- this message was
20 probably originally there -- again, I don't know when.
21 But completely unrelated to the time at the top of the
22 screen.

23 Q. Okay.

24 MR. GREENBERG: You would have hit the "print
25 screen" button, and that would have taken a capture of

1 the entire screen which shows the time.

2 BY MS. STIER:

3 Q. So can I ask you to go back to this. Do you
4 still have this?

5 A. I seriously doubt it, but I --

6 MR. GREENBERG: You could try to find those.

7 THE WITNESS: I can look. Oh, you mean the
8 screenshot or you mean the computer?

9 BY MS. STIER:

10 Q. So that you can tell me what date this is. It
11 only says Sunday, 9:51.

12 A. I seriously doubt it. My guess would be --

13 MR. GREENBERG: Don't guess.

14 THE WITNESS: I won't guess.

15 BY MS. STIER:

16 Q. Can you make an effort?

17 A. I don't know how we'd do that, but I can get you
18 the screen.

19 MS. STIER: I just want to know what date it is.

20 MR. GREENBERG: If he has the image file.

21 THE WITNESS: Correct.

22 MR. GREENBERG: The metadata or whatever the
23 hell you call it that the -- you know, would show a
24 created date and all that stuff.

25 THE WITNESS: Yeah. If I have it.

1 MS. STIER: If you can without --

2 THE WITNESS: Yeah, I can try it.

3 MR. GREENBERG: If there's a change in the file,
4 we'll do that.

5 THE WITNESS: I may be able to do that, yeah.

6 BY MS. STIER:

7 Q. So for -- for the 2012 return --

8 A. Yes.

9 Q. -- it was due on April 15th. This is a calendar
10 for 2015 --

11 A. Yeah.

12 Q. -- for April.

13 A. Yeah.

14 Q. Do you know what day you submitted it to
15 TurboTax?

16 A. I do not. I might be able to find that out too.

17 MR. GREENBERG: That's fine. That's --

18 THE WITNESS: I want to say it was Friday, the
19 12th, but it could have been Monday, the 15th.

20 MS. STIER: I don't want you to speculate.

21 MR. GREENBERG: Just say "I don't remember" if
22 you don't remember.

23 THE WITNESS: I don't remember.

24 MR. GREENBERG: Computer records of that.

25 THE WITNESS: Yeah.

1 MR. GREENBERG: So . . .

2 BY MS. STIER:

3 Q. And so this Exhibit 2, the first notice you
4 looked at, was -- or this is -- this notice that we're
5 talking about, page 11 of 16 --

6 A. Yeah.

7 Q. -- is Sunday, 9:51 p.m.

8 A. That is the time that I took the screenshot.

9 Q. Looked at it?

10 A. Yeah.

11 Q. And that probably would have been in November or
12 December of 2014?

13 A. Yeah. Exactly.

14 Q. Okay. The next one I'd like you to look at is a
15 screenshot that is on page 13 of 16.

16 A. It's this one.

17 Q. And is that the next one you looked at?

18 A. Yeah.

19 Q. Because it's 9:53 p.m., two minutes later.

20 A. Yeah. I think I was going back through them and
21 printing them to attach to this letter.

22 Q. Okay. And is this your handwriting on the
23 left-hand side?

24 A. Yes.

25 Q. And so this is where you --

1 A. This is in -- yeah. This is me sending the
2 payment via Express.

3 Q. Okay.

4 A. Yeah.

5 MS. STIER: I'm going to go off the record for
6 one minute.

7 (Off the record from 9:55 a.m. to 9:57 a.m.)

8 BY MS. STIER:

9 Q. So there's a third screenshot in this exhibit.
10 There was one at 9:51 and 9:54, and there was one for
11 9:53, I think. So one in between the two on page 13 of
12 16.

13 A. Yes. Yeah, that's where we were, yep.

14 Q. Okay. And so is that your -- wasn't this the
15 one we just looked at?

16 A. Yeah.

17 MR. GREENBERG: I think the 9:54 is the one we
18 haven't done yet.

19 BY MS. STIER:

20 Q. So page 13 of 16, that's your handwriting?

21 A. Yes.

22 Q. And that's at 9:53 p.m.?

23 A. Yep.

24 Q. And that's when you looked at -- or you looked
25 at this was, to the best of your recollection today,

1 either November or December of 2014?

2 A. That's correct. That's correct.

3 Q. Okay. And so there's another one for 9:54?

4 A. Yes. That was the first one, I think.

5 Q. So that's on page 9 of 16?

6 A. Yes.

7 Q. And is that your handwriting on the --

8 A. Yes.

9 Q. -- left side?

10 It says [as read]:

11 "When I was notified in 2014 that
12 my 2012 taxes had not been filed, I
13 logged back in to TurboTax and found
14 this error."

15 A. Right.

16 Q. Okay. And to the best of your recollection,
17 that was in November or December of 2014?

18 A. So that is true. But I just want to be clear
19 that I -- that I -- when I originally went back in and
20 found these three screens, I internalized, and I said,
21 "Oh, my God, that's what happened."

22 But I don't think I took the screenshots then
23 because I wasn't thinking -- I think the screenshots --
24 speculation, but I think they were when I was writing
25 the letter in April or whatever.

1 Q. Okay. Understood. Understood.

2 A. Yeah.

3 Q. So when you went back and looked at the
4 screenshots --

5 A. Yeah.

6 Q. -- you realized that your return had not been
7 processed?

8 A. That's correct.

9 Q. Okay. And I realize that you had been notified
10 or -- you know, by the IRS beforehand, or you believe
11 you had been notified --

12 A. Yeah.

13 Q. -- by the IRS beforehand.

14 A. Yeah. Could have been a few days or a week.
15 Again, I don't know exact numbers of days, but I had
16 been notified.

17 Q. Well, you do give a couple dates about when your
18 notice was. One was November, another was
19 December 2014, one is January 7, 2015, and then I just
20 heard February.

21 A. I never gave that one.

22 MR. GREENBERG: January was me. That was my
23 drafting of the complaint.

24 MS. STIER: Okay.

25 THE WITNESS: Yeah.

1 MR. GREENBERG: And it's on or about.

2 THE WITNESS: And I think it was November, but I
3 don't know for sure. All I know is I started having --
4 I paid it on January 7th, and I think I had a couple of
5 calls with the IRS in December. But I don't know
6 exactly when I got notification from the IRS.

7 BY MS. STIER:

8 Q. Okay. So is it -- do you know --

9 A. Yeah.

10 Q. -- whether you were notified prior to looking
11 back at these -- going back into the software?

12 A. Yes. I was --

13 MR. GREENBERG: Wait. Wait.

14 THE WITNESS: I was notified prior to that.

15 MS. STIER: Yes.

16 MR. GREENBERG: You said --

17 THE WITNESS: By the IRS.

18 MR. GREENBERG: You say notified. Again --

19 MS. STIER: By the IRS.

20 MR. GREENBERG: Yeah. Yeah. Yeah.

21 THE WITNESS: Again, I only looked at the
22 software because some notification indicated to me that
23 my 2012 return had not been processed.

24 BY MS. STIER:

25 Q. Okay. And when you looked at the software and

1 saw these screenshots --

2 A. Yeah.

3 Q. -- you knew that the return had not been
4 processed --

5 A. Right.

6 Q. -- and made it clear?

7 A. Yeah.

8 Q. And you knew why it had not been processed --

9 A. That's correct.

10 Q. -- and made it clear?

11 A. Exactly right.

12 Q. Okay. And so these are interrogatory responses.

13 We're on 3.

14 MR. GREENBERG: Which are not signed, which are
15 drafts, and which I drafted before any of this, which he
16 has not signed.

17 MS. STIER: Okay.

18 MR. GREENBERG: Yeah.

19 BY MS. STIER:

20 Q. So let me ask you the question here.

21 A. Okay.

22 MS. STIER: Well, I mean, is he going to sign
23 these?

24 MR. GREENBERG: I might have to revise these
25 based on some of the -- I may have to go back and review

1 these based on some of the responses here. Like the --
2 for instance, the -- the fact that the state returns
3 weren't e-filed. That, for instance, may change my
4 responses to some of these.

5 MS. STIER: So I just -- I mean, I rely upon
6 these being under penalty of perjury by the taxpayer.

7 MR. GREENBERG: Right. I totally get that. And
8 they aren't signed, and they're in draft. The ones I
9 emailed to you, they had the draft watermark. That
10 doesn't have that. But I -- anyway, these are drafts.
11 He hasn't signed these yet.

12 BY MS. STIER:

13 Q. All right. So I don't want to mislead you. So
14 I guess they're drafted. And I have copies of them over
15 there. And so I just want to ask you some questions,
16 then you can read the response that's here.

17 A. Okay. Where are they?

18 Q. They're over there, I think.

19 MR. GREENBERG: Oh. These are -- yeah, but I've
20 got them on my computer.

21 THE WITNESS: If you read them to me, I can
22 probably . . .

23 BY MS. STIER:

24 Q. I can have you --

25 A. Yeah.

1 Q. So in this interrogatory, I asked you what
2 did --

3 A. When?

4 Q. [As read]:

5 "When did TurboTax first notify
6 you that the 2012 Form 1040 had not
7 been timely filed?"

8 And the response in the draft response is "To
9 Plaintiff's" -- to your knowledge, Mr. Spottiswood --

10 A. Yes.

11 Q. -- TurboTax never notified you in -- of the
12 e-filing rejection in any meaningful sense.

13 A. [As read]:

14 "In order to check the status of
15 the e-filing, Plaintiff as a user was
16 required to reenter the program and
17 navigate to the appropriate e-filing
18 section to check the status of the
19 submitted e-filing. To Plaintiff's
20 knowledge, no email, phone SMS, text,
21 or similar message was sent to he or
22 spouse to notify him of the e-filing
23 rejection."

24 That's correct.

25 Q. Is that correct?

1 A. Yeah.

2 Q. So I want to ask you now: Do you know -- can
3 you testify today under penalty of perjury --

4 A. Yeah.

5 Q. -- whether you were notified by email by
6 TurboTax?

7 A. All I can testify under penalty of perjury is
8 that I personally did not -- am not aware, had never saw
9 any email from -- I am not aware of and never saw any
10 email from TurboTax alerting me to anything related to
11 my 2012 return. Email is a tricky thing. But for me
12 personally, I never saw an email from TurboTax, and I've
13 searched.

14 MR. GREENBERG: And the reason you're couching
15 it as phrased, because you're like -- there's a
16 possibility it could have gone in your spam; basically,
17 what you're saying is, "I can't totally 100 percent say
18 it didn't go in a spam folder," something like that?

19 THE WITNESS: I can say with certainty there's
20 no way I ever opened an email from TurboTax that alerted
21 me to that. And I don't believe I ever received one. I
22 never saw it. And I've searched.

23 BY MS. STIER:

24 Q. And you've searched -- do you still have that
25 computer?

1 A. I don't know if I still have that computer. I
2 mean, email -- the email --

3 Q. Have you searched your emails?

4 A. I don't have access to the inflection.com email
5 anymore. And so I do have access to my Gmail, but I'm
6 not sure if I could search the inflection.com email
7 system. I would have to go back to that company and
8 find out whether they would enable me to search their,
9 like -- I don't even know if they keep ex-employee
10 records for a long period of time.

11 Q. Right. So my question is going to be that --
12 you could have used that inflection.com email address?

13 A. I don't believe that I would have. But it is
14 possible that I would have used my
15 "jspottiswood@mba1994hbs.edu" and that that might have
16 forwarded to my --

17 Q. I'm not asking you to speculate.

18 A. I don't know.

19 Q. I'm asking you to answer my question.

20 A. I don't know. Yeah.

21 Q. I'm trying --

22 A. Is it possible?

23 Q. I'm trying to be fair to you.

24 A. Yeah, I get it.

25 Q. Okay.

1 A. I think it's -- go ahead.

2 Q. So you could have used that email address,
3 inflection.com?

4 A. It's highly unlikely, but, yes, I could have.

5 Q. Okay.

6 A. The reason I say it's highly unlikely, because I
7 generally -- because I leave jobs every few years that
8 I -- typically, when I sign up for things, I don't sign
9 up with my work email. So it would be -- it would have
10 definitely been a very unusual exception. But it's
11 possible.

12 Q. And have you had any discussions about a lawsuit
13 with TurboTax arising or, you know, in relation to this
14 issue?

15 A. No.

16 Q. Okay. And Interrogatory Number 3 -- I'd like
17 you to read it and your response. Then I'm going to ask
18 you some questions -- that same question.

19 A. "State with particular" --

20 (Reporter interrupts.)

21 (Pause in the proceedings.)

22 THE WITNESS: Okay. I've read it.

23 BY MS. STIER:

24 Q. So the question is: I wanted you to state with
25 particularity --

1 A. Yeah.

2 Q. -- all actions you or your spouse --

3 Let's just go with you first.

4 A. Okay.

5 Q. -- that you took, or your agent --

6 A. Yeah.

7 Q. -- between April 12, 2013 --

8 A. Yeah.

9 Q. -- and January 7, 2015, to determine whether or
10 not the IRS had accepted your 2012 tax return --

11 A. Yeah.

12 Q. -- filed through TurboTax.

13 A. Yep. And I think they're all covered in the
14 complaint. I mean, I could state verbally what most of
15 those actions were. But, again, as I mentioned, I don't
16 remember the exact date that I did the TurboTax
17 investigation. I think it was November or December.

18 At the same time, I went back and looked at my
19 bank statements to see whether or not payment had been
20 actually taken out of my account and realized that it
21 hadn't. So that was confirmation that at least payment
22 didn't occur.

23 Q. You called the IRS?

24 A. Called the IRS.

25 Q. One or two times?

1 A. At least. Probably more than that. Probably
2 three or four times. Couple times prior to the -- I
3 believe I called a couple times prior to the payment on
4 January 7th of 2015, and then I think I called a few
5 more times prior to deciding to send these letters to
6 the department of appeals just trying to figure out what
7 the process is and -- and who I should be communicating
8 with.

9 Q. But those -- I guess those phone calls -- were
10 any of them having to do with whether or not the return
11 was actually filed?

12 A. No.

13 Q. I mean, I understand there were some with
14 payments and how you make payments, but --

15 A. No. I think that between looking at my bank
16 account statements and then going into TurboTax and
17 finding these screens that I printed, it became clear to
18 me that my attempt at filing had been rejected and that
19 my payment had not been processed.

20 Q. Okay. And did you discuss this with your wife?

21 A. Yes.

22 Q. Okay. Around that time?

23 A. Yes.

24 Q. Okay. Are you aware of any other actions that
25 she took independently?

1 A. No. She did not take any actions --

2 Q. Okay.

3 A. -- that I'm aware. I'd be very surprised.

4 Q. So she may have taken action?

5 A. I would say absolutely not. But, again, I don't
6 follow her around all day long. She never told me of
7 any action she's taken, and I don't believe she's taken
8 any actions. It's possible that initially I asked her
9 to --

10 MR. GREENBERG: Speculating.

11 THE WITNESS: That's true. Speculating.

12 BY MS. STIER:

13 Q. Okay. And so then Interrogatory Number 6 -- can
14 you read that to yourself, and I'll ask you the question
15 just to . . .

16 A. (Reviewing document.)

17 Yeah, I think this needs to be -- this needs to
18 be corrected.

19 Q. I understand it's a draft, and I'm going to ask
20 you the question again --

21 A. Okay. Sure. Sure. Yeah.

22 Q. -- because I think that I understand from your
23 deposition testimony that it might be a little
24 different.

25 A. Yeah.

1 Q. Okay. So the question is: When the IRS first
2 notified you that your 2012 1040 had not been timely
3 filed --

4 And this draft answer says February 16, 2015?

5 A. Yeah.

6 Q. But --

7 A. It was sometime, I believe, in November of 2014.

8 Q. And to the best of your recollection, that would
9 have been written notification or oral notification on
10 the phone?

11 A. I believe it was written notification.

12 Q. Okay.

13 MR. GREENBERG: The IRS doesn't call people.

14 THE WITNESS: Yeah. I'm pretty sure it was
15 written notification.

16 MS. STIER: I was just asking.

17 BY MS. STIER:

18 Q. Going back to that 48-hour period.

19 A. Yeah.

20 Q. Is it your -- do you have any knowledge,
21 information, or belief that those screenshots would have
22 been available 48 hours after you filed that?

23 A. I have no knowledge of that.

24 Q. So -- and you just pulled that 48 hours out of
25 the --

1 A. Yeah, I did.

2 Q. Did you ever contact TurboTax?

3 A. I have not.

4 Q. And Request Number 13 --

5 A. Yeah.

6 Q. -- my question is -- I'll read this one.

7 A. Okay.

8 Q. [As read]:

9 "Admit that TurboTax notified

10 Plaintiff John Spottiswood year 2012

11 federal return rejected after fixing

12 errors will help you file your return

13 again."

14 A. Right.

15 Q. Do you recall that's one of the screenshots?

16 A. Yes.

17 Q. Okay. And the answer here -- it's a draft
18 answer -- was that it's denied. It states that
19 [as read]:

20 "The program did not notify

21 Plaintiff in any meaningful sense.

22 However, the error message would have

23 eventually been accessible to

24 Plaintiff through the TurboTax

25 software typically within a few days

1 of the e-filing attempt."

2 Do you know where that information came --
3 whether that's accurate or not, "typically within" --

4 A. I do not.

5 Q. -- "within a few days of the e-filing attempt"?

6 A. I do not.

7 MR. GREENBERG: That's me and my own personal --
8 just experience as a tax preparer and filer.

9 THE WITNESS: Yeah, I do not know.

10 (Off the record from 10:17 a.m. to 10:18 a.m.)

11 MS. STIER: That's all I have.

12 (At 10:18 a.m., the proceedings were adjourned.)

13

14

15

16 JOHN SPOTTISWOOD

17

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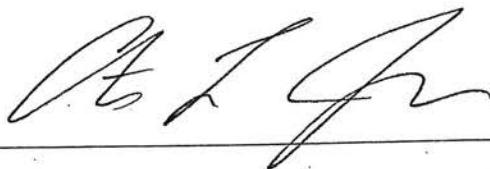
1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SAN MATEO)
4

5 I hereby certify that the witness in the
6 foregoing deposition, JOHN SPOTTISWOOD, was by me duly
7 sworn to testify to the truth, the whole truth and
8 nothing but the truth, in the within-entitled cause;
9 that said deposition was taken at the time and place
10 herein named; and that the deposition is a true record
11 of the witness's testimony as reported by me, a duly
12 certified shorthand reporter and a disinterested person,
13 and was thereafter transcribed into typewriting by
14 computer.

15 I further certify that I am not interested in
16 the outcome of the said action, nor connected with nor
17 related to any of the parties in said action, nor to
18 their respective counsel.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand this 21st day of December, 2017.

21 x Reading and Signing was not requested.

22 
23 _____
24

25 CHRISTINE L. JORDAN, CSR NO. 12262

STATE OF CALIFORNIA

LAWYER'S NOTES

John Spottswood
201 Rockridge Road
San Carlos, CA 94070
415-806-8995

VR
PTX

Submission Processing	
MAY 06 2015	Received
FRESNO - ICT	

To whom it may concern,

I would like to appeal to the penalties assessed to me for late filing and late payment of my 2012 and 2013 tax returns. I attempted to appeal this over the phone earlier this year and now I am following instructions on the IRS website.

The fees that I am appealing are the following:

- \$89,014.27 Failure to file penalty
- \$41,539.99 Failure to pay penalty
- \$3428.04 Penalty amount for insufficient funds

Submission Processing	
APR 27 2015	Received
FRESNO - ICT	

The primary reason for my failure to file and failure to pay was that I believed that I had filed and had paid by taxes in full for 2012. For many years prior to 2012 my taxes had been filed by a tax advisor. The same advisor had filed both my personal return and the return for Grecipes LLC, a limited liability company of which I am the manager. For the 2012 tax year I changed tax advisors due to issues I had with my former advisor, and the new advisor that I brought on for Grecipes LLC would not help file my personal return. On the advice of a colleague, I decided to file my return myself for the first time using Intuit's Turbo Tax software.

I completed the return prior to April 15, 2013 and attempted to e-File both my Federal and California state returns. My California return filed successfully, and my bank statement shows that the Franchise Tax Board successfully withdrew \$238,492 on April 16 based on the taxes that I filed. My Federal Return was completed and returned with my state return, as is always the case when filing state taxes. I am attaching my bank statement with proof of the state taxes paid. You will also notice that I had a significant remaining balance in my account from which I expected my federal taxes would be deducted.

It wasn't until almost 18 months later that I realized that my Federal Tax return had not been successfully filed via Turbo Tax, and that the payment I had attempted to make had never been cashed by the IRS. I discovered this in November of 2014, when I was informed by the IRS that they could not process my 2013 Tax Return because my 2012 return had not been completed. I never received a call or email from Turbo Tax that my 2012 return had not successfully been filed. I also did not receive a call or letter from the IRS, that I am aware of, prior to my attempted filing of my 2013 return.

When I was investigating the issue, I discovered the following by logging back into my Turbo Tax 2012 software. First, I discovered that my return, which I thought had been successfully e-filed, had actually been rejected. If I had realized that there was a chance of rejection I would have mailed in my return, but e-filing seemed like an easier option and it was free with the software. Intuit may have informed me in the fine print that I needed to log back in to make sure that my return had not been rejected, but if so I did not read this fine print. Had I logged back in a few days later I would have realized that the return had been rejected. But I did not log back in until 18 months later.

IRS

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FRESNO CA
1344

The rejection message that I found when I logged back in this past November was error R0000-504-02 - Dependent's Social Security number or name doesn't match. I checked with my wife and she discovered

14 C. 1

PLTF.
EXHIBIT 1
WITNESS JOHN SPOTTSWOOD
DEFT.
CONSISTING OF 6 PAGES
DATE 12-11-17
BEHMKE REPORTING AND VIDEO SERVICES, INC.

that in the iphone contact card she had shared with me (she keeps our children's social security numbers as a contact card within her iphone) she had mistyped one digit of one of our children's social security numbers. This was our son Jack's ssn. It never occurred to me that such an error could cause my return to be rejected. I certainly wish that I had checked back on Intuit's site 48 hours later to make sure that my return had successfully filed, but it never occurred to me to do so. The Turbo Tax software forced me to correct all issues with my return, so that when I was ready to e-file my return I had every reason to believe that any and all issues had been corrected.

I hope that you will accept my appeal on the basis that an honest mistake was made. If I had realized that my tax return for 2012 had been rejected and that my taxes had not been paid I would definitely have corrected the issue as soon as I discovered it.

There was also a complicating factor with a serious illness that occurred with my father in law, Daniel Miyasaki. My wife learned in late March of 2013 that Dan had pulmonary fibrosis and might be in a state of perpetual decline. This was an extremely challenging period for her and her sister, who were still reeling from the recent loss of their mother. While this family tragedy did not directly impact the rejection of our tax return, I do think it was contributed significantly to the fact that my wife did not notice that the funds for our federal tax return were not withdrawn from our Bank of America account.

If addition to the honesty of the mistake and the tragedy with Nancy's father, I would also ask that you consider that this is my first time not filing taxes since I began filing them in the 1980s. I understand that there is a first time abatement rule, and I hope that you will apply that rule if my appeal is not granted on other grounds.

Finally, I just want to affirm that I do take responsibility for the fact that the US Treasury did not receive my funds on time and that I unintentionally short changed the government of funds they should have received. I realize that the US Treasury had to borrow money to cover these funds that I was unintentionally holding onto. So in addition to paying my 2012 and 2013 taxes in full in February of this year, I also paid the \$26,216.81 in interest that was assessed to me for the late payment for both years.

Under the penalties of perjury, I declare that the facts stated in this protest and any accompanying documents are true, correct, and complete to the best of my knowledge and belief.

I sincerely apologize for the confusion that I have caused and will make sure that my future returns are not only filed on time, but also that they are not rejected for any reason including mistyped SSNs.

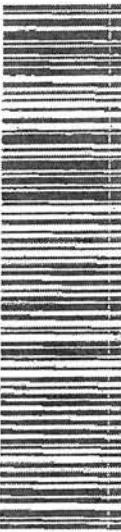
Thank you for your consideration of this appeal.

Sincerely,

John Spotswood
#8696

100-1

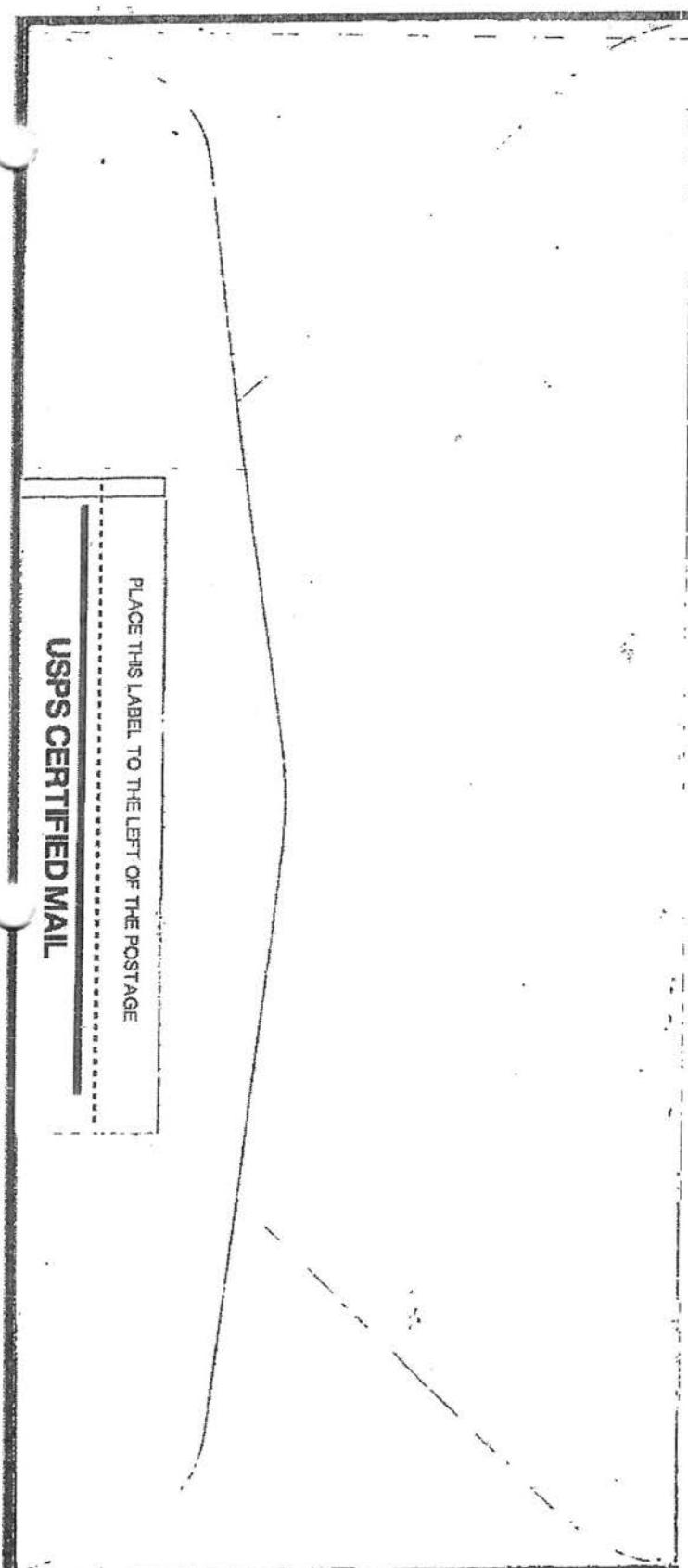
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Fresno, CA 93888





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USPS CERTIFIED MAIL

John Spottiswood
201 Rockridge Road
San Carlos, CA 94070
415-806-8995
SSN: [REDACTED]-8696

*Abatement request
Rec'd 7-5-15*

To the IRS Office of Appeals,

I would like to appeal the penalties assessed to me for late filing and late payment of my 2012 and 2013 tax returns to the Office of Appeals. My request was considered on a telephone call on March 2, 2015 and I sent an initial request for Appeal later in March 17th. I received a letter dated April 30th that my request had already been considered on the March 2nd call. After calling in and speaking with Agent 1001307162 I was informed that my Appeal had not reached the office of appeals and that I needed to send my letter to this address to request an appeal. I hope you will consider it now.

The fees that I am appealing are the following:

- \$89,014.27 Failure to file penalty
- \$41,539.99 Failure to pay penalty
- \$3428.04 Penalty amount for insufficient funds

The primary reason for my failure to file and failure to pay was that I believed that I had filed and had paid by taxes in full for 2012. For many years prior to 2012 my taxes had been filed by a tax advisor. The same advisor had filed both my personal return and the return for Grecipes LLC, a limited liability company of which I am the manager. For the 2012 tax year I changed tax advisors due to issues I had with my former advisor, and the new advisor that I brought on for Grecipes LLC would not help file my personal return. On the advice of a colleague, I decided to file my return myself for the first time using Intuit's Turbo Tax software.

I completed the return prior to April 15, 2013 and attempted to e-File both my Federal and California state returns. My California return filed successfully, and my bank statement shows that the Franchise Tax Board successfully withdrew \$238,492 on April 16 based on the taxes that I filed. My Federal Return was completed and returned with my state return, as is always the case when I file my taxes, but this time I attempted to both file and pay them electronically via e-file through Intuit's Turbo Tax. I am attaching my bank statement with proof of the state taxes paid. You will also notice that I had a significant remaining balance in my account from which I expected my federal taxes would be deducted.

It wasn't until almost 18 months later that I realized that my Federal Tax return had not been successfully filed via Turbo Tax, and that the payment I had attempted to make had never been cashed by the IRS. I discovered this in November of 2014, when I was informed by the IRS that they could not process my 2013 Tax Return because my 2012 return had not been completed. I never received a call or email from Turbo Tax that my 2012 return had not successfully been filed. I also did not receive a call or letter from the IRS, that I am aware of, prior to my attempted filing of my 2013 return. Normally, we would notice if nearly \$300,000 were not withdrawn from our account. However, in this instance we were in the middle of a home remodel and had a large balance in our account to cover both our taxes and ongoing remodel expenses. So my wife did not notice that our 2012 federal taxes due were never collected by the IRS.

When I was investigating the issue, I discovered the following by logging back into my Turbo Tax 2012 software. First, I discovered that my return, which I thought had been successfully e-filed, had actually been

09 A. 008

EXHIBIT 2
WITNESS JOHN SPOTTISWOOD
CONSISTING OF 14 PAGES
DATE 12-11-17
BEHMKE REPORTING AND VIDEO SERVICES, INC.

PLTF.
DEFT.

rejected. If I had realized that there was a chance of rejection I would have mailed in my return, but e-filing seemed like an easier option and it was free with the software. Intuit may have informed me in the fine print that I needed to log back in to make sure that my return had not been rejected, but if so I did not read this fine print. Had I logged back in a few days later I would have realized that the return had been rejected. But I did not log back in until 18 months later.

The rejection message that I found when I logged back in this past November was error R0000-504-02 - Dependent's Social Security number or name doesn't match. I checked with my wife and she discovered that in the iphone contact card she had shared with me (she keeps our children's social security numbers as a contact card within her iphone) she had mistyped one digit of one of our children's social security numbers. This was our son Jack's ssn. It never occurred to me that such an error could cause my return to be rejected. I certainly wish that I had checked back on Intuit's site 48 hours later to make sure that my return had successfully filed, but it never occurred to me to do so. The Turbo Tax software forced me to correct all issues with my return, so that when I was ready to e-file my return I had every reason to believe that any and all issues had been corrected.

I hope that you will accept my appeal on the basis that an honest mistake was made. If I had realized that my tax return for 2012 had been rejected and that my taxes had not been paid I would definitely have corrected the issue as soon as I discovered it. According to Section 20.1.2.1.4.1 of the Penalty Handbook, I believe that the undiscovered SSN error combined with this being my first time filing with TurboTax provide Reasonable Cause for my failure to pay and I had no willful intent not to pay my taxes. I really wish the taxes had been paid when I thought they had been.

There was also a complicating factor with a serious illness that occurred with my father in law, Daniel Miyasaki. My wife learned in late March of 2013 that Dan had pulmonary fibrosis and might be in a state of perpetual decline. This was an extremely challenging period for her and her sister, who were still reeling from the recent loss of their mother. While this family tragedy did not directly impact the rejection of our tax return, I do think it was contributed significantly to the fact that my wife did not notice that the funds for our federal tax return were not withdrawn from our Bank of America account.

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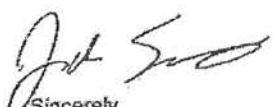
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Under the penalties of perjury, I declare that the facts stated in this protest and any accompanying documents are true, correct, and complete to the best of my knowledge and belief.

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Thank you for your consideration of this appeal.

09 A . 008



Sincerely,
John Spottswood
~~SP-8696~~

09 A. 008

When I was notified in

2014 that my 2012 taxes had not been filed, I rejected back into TurboTax and found error

R0000-504-02

ints or answers.

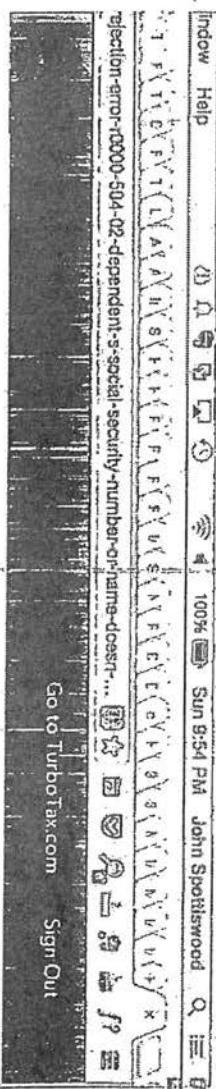
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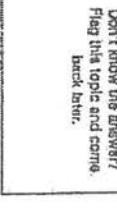
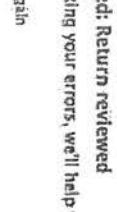
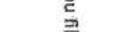
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that had my 2012 turbo
tax software and investigation
the issue

I found the computer that had my 2012 taxes tax software and investigation the issue	
<p>Flags Window Help     100% Sun 9:51 PM John Spottswood </p> <p> taxReturn.tax2012</p> <p> Topic List  Search Topics  Tax Data  Tax Summary</p> <p> Help Center  Community</p> <p> Personal Info  Business Info  Personal Tax Return Status  Save for Your Records  Check E-File Status</p> <p> File  Print  Send  Email  Stand</p> <p> X</p> <p> Errors Fixed & Ready to File</p> <p> J Show All </p> <p> Site Plan with Icons  No Form</p>	<p>Don't know the answer? Flag this topic and come back later.</p> <p></p> <p>Your E-file Status</p> <p>When your return is rejected by the government, there's no need to panic. It just means they found an error. We'll help you fix it, and get your return filed again. Explain This</p> <p></p> <p>Your 2012 Federal Return</p> <p>Rejected: Return reviewed After fixing your errors, we'll help you file your return again. Review again</p> <p></p> <p>Errors Fixed & Ready to File</p> <p>J Show All </p> <p>702078@geocities.com</p>

<p>I found that my younger son Jack's SSN was mistyped - one # was wrong. It was too late to resubmit electronically, so I sent the return + payment by express mail.</p> <p>Flags</p> <p>Don't know his answer? Flag this topic and come back later.</p>	
<p>Verify Dependent's Social Security Number</p> <p>The Social Security number or the last name does not match what the IRS has in their records.</p> <p>Please review the information below. The information entered on the return must be exactly how it appears on the child's Social Security card, including middle initial and suffix (if applicable).</p> <p>Is there a mistake with the Social Security number or last name for any of your children?</p> <p>Social Security number of Daniel: Last name of Daniel: Social Security number of Kyle: Last name of Kyle: Social Security number of Kira: Last name of Kira: Social Security number of Jack: Last name of Jack:</p> <p><input type="checkbox"/> Yes, there is a mistake. <input type="checkbox"/> I'll correct the mistake on the next page.</p>	
<p>No Form</p>	



NANCY A MIYASAKI
JOHN D SPOTTISWOOD

April 2013
Statement

H—
Combined Statement
Page 7 of 10
Statement Period
03-20-13 through 04-18-13
B-12 E-1 E-P-1-12
004986

Regular Savings Subtractions

ATM and Debit Card Subtractions	Date Posted	Amount(\$)
BkofAmerica ATM 03/22 #000004820 To Chkg	03-22	3,500.00
Savemart 749 San San Carlos CA		
H S B C 03/29 #000229181 Withdrawl	03-29	245.66
H S B C / Benito Juarez		
Total ATM and Debit Card Subtractions \$3,745.66		

Service Charges and Other Fees	Date Posted	Amount(\$)
H S B C 03/29 #000229181 Withdrawl	03-29	5.00
H S B C / Benito Juarez Fee		
H S B C 03/29 #000229181 Withdrawl	03-29	2.46
H S B C / Benito Juarez International Transaction Fee		
Total Service Charges and Other Fees \$7.46		

Other Subtractions	Date Posted	Amount(\$)
Franchise Tax Bo Des:Payments ID:29053626 Pm Indn:Spottiswood Co ID:1282532045 Web	04-16	238,492.00
Total Other Subtractions \$238,492.00		

State taxes paid

Daily Balance Summary

Date	Balance(\$)	Date	Balance(\$)	Date	Balance(\$)
Beginning 03-22	1,273,062.14	03-29	1,269,309.02	04-18	1,030,827.26
	1,269,562.14	04-16	1,030,817.02		

This is from my April 2013 Bank of America statement. It shows that I had enough money to pay my U.S. taxes which I thought would be withdrawn.
2) my 2012 CALIFORNIA STATE TAXES were withdrawn.

Balance to pay US
2012 taxes

09 A. 008

